

Message Text

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ACTION VO-03

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FM AMEMBASSY PORT AU PRINCE

TO SECSTATE WASHDC PRIORITY 2629H

UNCLAS PORT AU PRINCE 2081

ATTN: VO/RLD

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TAGS: CVIS, HA

SUBJECT: ILLEGITIMATE CHILDREN OF FATHERS UNDER SECTION

101(B)(1)(B) INA

REF: STATE 188437

1. OVERWHELMING MAJORITY HAITIANS EMIGRATE TO NEW YORK CITY WHERE ANDRADE VS ESPERDY DECISION APPLICABLE; MOST CHILDREN BORN IN HAITI ARE NATURAL AND ILLEGITIMATE; HENCE, THIS POST HAS HIGH INCIDENCE OF ADJUDICATIONS UNDER 22 CFR 42.1, NOTE 2.3. EXACT NUMBER DIFFICULT TO DETERMINE AS NO RECORDS HAVE BEEN KEPT AND OFFICER WHO ALONE RAN IV SECTION FOR PAST YEAR WAS MEDICALLY EVACUATED LAST MONTH.

WE ESTIMATE THAT 99 PERCENT OUR IMMIGRANT CASES ARE GENERATED BY ALIENS WHO ENTER WITH NONIMMIGRANT VISAS, OVERSTAY ILLEGALLY, AND MARRY CITIZENS OR RESIDENT ALIENS TO ACQUIRE 212(A)(14) EXEMPTION FOR THEMSELVES AND CREATE STEP RELATIONSHIP FOR THEIR LEGITIMATE OR ILLEGITIMATE CHILDREN IN HAITI. OUR LOCAL EMPLOYEES WHO SET UP AND PROCESS IV CASES ESTIMATE ILLEGITIMACY TO BE A FACTOR IN AT LEAST 80 PERCENT OF CASES AND THAT OVERALL NUMBER OF CHILDREN ACQUIRING STATUS THROUGH A STEPMOTHER IN PAST YEAR IS AT LEAST ONE THOUSAND.

2. HAITIAN LAW PROVIDES THAT EITHER NATURAL PARENT MAY

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RECORD CHILD'S BIRTH. BIRTH CERTIFICATE ALWAYS INDICATES

IF CHILD LEGITIMATE OR NATURAL. THE CHILD'S BIRTH CERTIFICATE AND FATHER'S CERTIFICATE OF MARRIAGE TO STEPMOTHER USUALLY SUFFICIENT ESTABLISH RELATIONSHIP FOR VISA REGISTRATION. DELAYED BIRTH REGISTRATION OR ANY ABOUT WHICH THERE MAY BE DOUBT ARE INVESTIGATED AND VERIFIED WITH NATIONAL ARCHIVES.

3. WHILE FRAUD IS RAMPANT IN ALMOST EVERY ASPECT OF VISA WORK HERE, IT IS, SURPRISINGLY, MINIMAL IN CASES OF CLAIMED ILLEGITIMATE CHILDREN.

4. ARTICLE 302 OF HAITIAN CIVIL CODE PROVIDES THAT A CHILD BORN OUT OF WEDLOCK MAY BE LEGITIMATED ONLY RPT ONLY BY THE SUBSEQUENT MARRIAGE OF THE PARENTS AND THEN ONLY PROVIDED THEY HAVE RECOGNIZED THE CHILD PRIOR TO, OR AT THE TIME OF, THE MARRIAGE. A CHILD RECOGNIZED BY THE PARENT'S SUBSEQUENT TO THE MARRIAGE CAN BE LEGITIMATED ONLY THROUGH COURT JUDGMENT. HAITIAN LAW ALSO PROVIDES FOR THE "RECOGNITION" OF ILLEGITIMATE CHILDREN BUT ARTICLE 309 PROVIDES THAT AN ILLEGITIMATE CHILD WHO HAS BEEN RECOGNIZED IS NOT ELIGIBLE TO CLAIM THE RIGHTS OF A LEGITIMATE CHILD. RECOGNITION CONSTITUTES AN ACCEPTANCE OF RESPONSIBILITY FOR THE CHILD'S WELFARE. THE MERE ACT OF RECORDING AS ILLEGITIMATE CHILD'S BIRTH BY EITHER PARENT CONSTITUTES RECOGNITION BY THAT PARENT. A CHILD WHOSE BIRTH WAS NOT RECORDED MAY BE SUBSEQUENTLY RECOGNIZED BY A PARENT ONLY THROUGH A SPECIAL ACT OF A MUNICIPAL MAGISTRATE IN CHARGE OF THE REGISTER OF BIRTHS. RECOGNITION IS NOT LEGITIMATION.

5. SINCE A PARENT-CHILD RELATIONSHIPS CAN BE ESTABLISHED ON A DELAYED BASIS MERELY BY GOING BEFORE A MAGISTRATE WITH TWO WITNESSES AND BY PRESENTING A MARRIAGE CERTIFICATE WHICH ANTE-DATES THE CHILD'S BIRTH, DELAYED REGISTRATIONS ARE ALWAYS SUSPECT. PATERNITY IS BEST ESTABLISHED FOR VISA PURPOSES WHEN (A) BIRTH WAS RECORDED WITHIN REASONABLE TIME (TWO YEARS) OF THE BIRTH, (B) BOTH PARENTS AG NAMED IN THE BIRTH REGISTRATION, (C) THE CHILD HAS BORNE ONLY THE SURNAME OF EITHER PARENT, (D) THE CHILD HAS LIVED ONLY WITH EITHER OF NAMED PARENTS, AND (E) THE BAPTISMAL CERTIFICATE WAS ISSUED PROXIMATE TO THE BIRTH AND NAMES BOTH PARENTS.

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6. IT SHOULD BE NOTED THAT IN EVERY RPT EVERY CASE INVOLVING CLAIMED PATERNITY THE ILLEGITIMATE CHILD IS IN THE TWELVE TO SEVENTEEN AGE CATEGORY. THERE IS NEVER A CASE INVOLVING AN INFANT. ADDITIONALLY, THE CHILD HAS SELDOM LIVED WITH THE NATURAL FATHER AND HAS NEVER EVEN MET THE STEPMOTHER. SEEKING AN IMMIGRATION STATUS FOR THE CHILD IS LESS TO CREATE A FAMILY UNIT THAN TO PROVIDE THE CHILD WITH THE MATERIAL BENEFITS THE U.S. RESIDENT FATHER CAN FURNISH AND IN VIRTUALLY ALL

CASES THE NATURAL MOTHER GIVES UP THE CHILD FOR THIS PURPOSE.
IT ALSO SHOULD BE NOTED THAT IT IS USUAL RATHER THAN RARE
FOR A WOMAN TO HAVE CHILDREN BY SEVERAL MEN.

7. TO REDUCE FRAUD POTENTIAL, SUB-COMMITTEE MIGHT GIVE
CONSIDERATION TO IMPOSING A TIME LIMIT, PROVIDING THAT THERE
MUST BE CLEAR PUBLIC RECORD OF ASSERTION OF PATERNITY PRIOR
TO CHILD'S ATTAINING A CERTAIN AGE, AND TO IMPOSING A PROVISIO
SIMILAR TO THAT IN 101(B)(1)(F) ON THE NATURAL MOTHER WHO OF
HER OWN VOLITION RELEASES THE CHILD TO THE NATURAL FATHER.
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